VII. JUDGMENT	TITLE VII. POST-CONVICTION PROCEDURES
Rule 32. Sentence and Judgment	**Rule 32. Sentencing and Judgment**
(f) Definitions. For purposes of this rule — (1) "victim" means any individual against whom an offense has been committed for which a sentence is to be imposed, but the right of allocution under subdivision (c)(3)(E) may be exercised instead by — (A) a parent or legal guardian if the victim is below the age of eighteen years or incompetent; or (B) one or more family members or relatives designated by the court if the victim is deceased or incapacitated; if such person or persons are present at the sentencing hearing, regardless of whether the victim is present; and (2) "crime of violence or sexual abuse" means a crime that involved the use or attempted or threatened use of physical force against the person or property of another, or a crime under chapter 109A of title 18, United States Code.	(a) **Definitions.** The following definitions apply under this rule: (1) "Victim" means an individual against whom the defendant committed an offense for which the court will impose sentence. (2) "Crime of violence or sexual abuse" means: (A) a crime that involves the use, attempted use, or threatened use of physical force against another's person or property; or (B) a crime under 18 U.S.C. §§ 2241-2248 or §§ 2251-2257.
(a) In General; Time for Sentencing. When a presentence investigation and report are made under subdivision (b)(1), sentence should be imposed without unnecessary delay following completion of the process prescribed by subdivision (b)(6). The time limits prescribed in subdivision (b)(6) may be either shortened or lengthened for good cause.	(b) **Time of Sentencing.** (1) ***In General.*** The court must impose sentence without unnecessary delay. (2) ***Changing Time Limits.*** The court may, for good cause, change any time limits prescribed in Rule 32.

(b) Presentence Investigation and Report. **(1) When Made.** The probation officer must make a presentence investigation and submit a report to the court before sentence is imposed unless: **(A)** the court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553; and **(B)** the court explains this finding on the record. Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court may direct, shall be required in any case in which restitution is required to be ordered.	**(c) Presentence Investigation.** (1) ***Required Investigation.*** (A) *In General.* The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless: (i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or (ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record. (B) *Restitution.* If the law requires restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.
(2) Presence of Counsel. On request, the defendant's counsel is entitled to notice and a reasonable opportunity to attend any interview of the defendant by a probation officer in the course of a presentence investigation.	(2) ***Interviewing the Defendant.*** The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.
(3) Nondisclosure. The report must not be submitted to the court or its contents disclosed to anyone unless the defendant has consented in writing, has pleaded guilty or nolo contendere, or has been found guilty.	

(4) Contents of the Presentence Report. The presentence report must contain — **(A)** information about the defendant's history and characteristics, including any prior criminal record, financial condition, and any circumstances that, because they affect the defendant's behavior, may be helpful in imposing sentence or in correctional treatment; **(B)** the classification of the offense and of the defendant under the categories established by the Sentencing Commission under 28 U.S.C. § 994(a), as the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission under 28 U.S.C. § 994(a)(1); and the probation officer's explanation of any factors that may suggest a different sentence — within or without the applicable guideline — that would be more appropriate, given all the circumstances; **(C)** a reference to any pertinent policy statement issued by the Sentencing Commission under 28 U.S.C. § 994(a)(2);	**(d) Presentence Report.** (1) ***Contents of the Report.*** The presentence report must contain the following information: (A) the defendant's history and characteristics, including: (i) any prior criminal record; (ii) the defendant's financial condition; and (iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment; (B) the kinds of sentences and the sentencing range provided by the Sentencing Commission's guidelines, and the probation officer's explanation of any factors that may suggest a more appropriate sentence within or without an applicable guideline; (C) a reference to any pertinent Sentencing Commission policy statement;

(D) verified information, stated in a nonargumentative style, containing an assessment of the financial, social, psychological, and medical impact on any individual against whom the offense has been committed; **(E)** in appropriate cases, information about the nature and extent of nonprison programs and resources available for the defendant; **(F)** in appropriate cases, information sufficient for the court to enter restitution; **(G)** any report and recommendation resulting from a study ordered by the court under 18 U.S.C. § 3552(b); and **(H)** any other information required by the court.	(D) verified information, stated in a nonargumentative style, that assesses the financial, social, psychological, and medical impact on any individual against whom the offense has been committed; (E) when appropriate, the nature and extent of nonprison programs and resources available to the defendant; (F) when the law permits the court to order restitution, information sufficient for such an order; (G) if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation; and (H) any other information that the court requires.
(5) Exclusions. The presentence report must exclude: **(A)** any diagnostic opinions that, if disclosed, might seriously disrupt a program of rehabilitation; **(B)** sources of information obtained upon a promise of confidentiality; or **(C)** any other information that, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.	(2) ***Exclusions.*** The presentence report must exclude the following: (A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program; (B) any sources of information obtained upon a promise of confidentiality; and (C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(6) Disclosure and Objections. (A) Not less than 35 days before the sentencing hearing — unless the defendant waives this minimum period — the probation officer must furnish the presentence report to the defendant, the defendant's counsel, and the attorney for the Government. The court may, by local rule or in individual cases, direct that the probation officer not disclose the probation officer's recommendation, if any, on the sentence.	**(e) Disclosing the Report and Recommendation.** (1) ***Time to Disclose.*** Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty. (2) ***Minimum Required Notice.*** The probation officer must give the presentence report to the defendant, the defendant's attorney, and the attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period. (3) ***Sentence Recommendation.*** By local rule or by order in a case, the court may direct the probation officer not to disclose to anyone other than the court the officer's recommendation on the sentence.
(B) Within 14 days after receiving the presentence report, the parties shall communicate in writing to the probation officer, and to each other, any objections to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the presentence report. After receiving objections, the probation officer may meet with the defendant, the defendant's attorney, and the attorney for the Government to discuss those objections. The probation officer may also conduct a further investigation and revise the presentence report as appropriate.	**(f) Objecting to the Report.** (1) ***Time to Object.*** Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. (2) ***Serving Objections.*** An objecting party must provide a copy of its objections to every other party and to the probation officer. (3) ***Action on Objections.*** After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report as appropriate.

(C) Not later than 7 days before the sentencing hearing, the probation officer must submit the presentence report to the court, together with an addendum setting forth any unresolved objections, the grounds for those objections, and the probation officer's comments on the objections. At the same time, the probation officer must furnish the revisions of the presentence report and the addendum to the defendant, the defendant's counsel, and the attorney for the Government. (D) Except for any unresolved objection under subdivision (b)(6)(B), the court may, at the hearing, accept the presentence report as its findings of fact. For good cause shown, the court may allow a new objection to be raised at any time before imposing sentence.	(g) **Submitting the Report.** At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them.

(c) Sentence. **(1) Sentencing Hearing.** At the sentencing hearing, the court must afford counsel for the defendant and for the Government an opportunity to comment on the probation officer's determinations and on other matters relating to the appropriate sentence, and must rule on any unresolved objections in the presentence report. The court may, in its discretion, permit the parties to introduce testimony or other evidence on the objections. For each matter controverted, the court must make either a finding on the allegation or a determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing. A written record of these findings and determinations must be appended to any copy of the presentence report made available to the Bureau of Prisons. **(2) Production of Statements at Sentencing Hearing.** Rule 26.2(a)-(d) and (f) applies at a sentencing hearing under this rule. If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the movant, the court may not consider the affidavit or testimony of the witness whose statement is withheld.	**(h) Sentencing.** **(1)** ***In General.*** At sentencing, the court: (A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report; (B) must give the defendant and the defendant's attorney a written summary of — or summarize in camera — any information excluded from the presentence report under Rule 32(d)(2) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information; (C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and (D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed. **(2)** ***Introducing Evidence; Producing Statements.*** The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)-(d) and (f) applies. If a party does not comply with a Rule 26.2(a) order to produce a witness's statement, the court must not consider that witness's testimony.

(3) Imposition of Sentence. Before imposing sentence, the court must: **(A)** verify that the defendant and the defendant's counsel have read and discussed the presentence report made available under subdivision (b)(6)(A). If the court has received information excluded from the presentence report under subdivision (b)(5) the court — in lieu of making that information available — must summarize it in writing, if the information will be relied on in determining sentence.	(3) ***Court Determinations.*** At sentencing, the court: (A) may accept any undisputed portion of the presentence report as a finding of fact; (B) must — for any disputed portion of the presentence report or other controverted matter — rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and (C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.
The court must also give the defendant and the defendant's counsel a reasonable opportunity to comment on that information; **(B)** afford defendant's counsel an opportunity to speak on behalf of the defendant; **(C)** address the defendant personally and determine whether the defendant wishes to make a statement and to present any information in mitigation of the sentence; **(D)** afford the attorney for the Government an opportunity to speak equivalent to that of the defendant's counsel to speak to the court;	(4) ***Opportunity to Speak.*** (A) *By a Party.* Before imposing sentence, the court must: (i) provide the defendant's attorney an opportunity to speak on the defendant's behalf; (ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and (iii) provide the attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(E) if sentence is to be imposed for a crime of violence or sexual abuse, address the victim personally if the victim is present at the sentencing hearing and determine if the victim wishes to make a statement or present any information in relation to the sentence.	(B) *By a Victim.* Before imposing sentence, the court must address any victim of a crime of violence or sexual abuse who is present at sentencing and permit the victim to speak or submit any information concerning the sentence. Whether or not the victim is present, a victim's right to address the court may be exercised by the following persons if present: (i) a parent or legal guardian, if the victim is younger than 18 years or is incompetent; or (ii) one or more family members or relatives the court designates, if the victim is deceased or incapacitated.
(4) In Camera Proceedings. The court's summary of information under subdivision (c)(3)(A) may be in camera. Upon joint motion by the defendant and the attorney for the Government, the court may hear in camera the statements — made under subdivision (c)(3)(B), (C), (D), and (E) — by the defendant, the defendant's counsel, the victim, or the attorney for the government.	(C) *In Camera Proceedings.* Upon a party's motion the court may hear in camera any statement made under Rule 32(h)(4).
	(5) ***Notice of Possible Departure from Sentencing Guidelines.*** Before the court may depart from the Guidelines calculation on a ground not identified as a ground for departure either in the presentence report or in a prehearing submission by a party, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specifically identify the ground on which the court is contemplating a departure.

(5) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court must advise the defendant of the right to appeal. After imposing sentence in any case, the court must advise the defendant of any right to appeal the sentence, and of the right of the person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. If the defendant so requests, the clerk of the court must immediately prepare and file a notice of appeal on behalf of the defendant.	**(i) Defendant's Right to Appeal.** (1) *Advice of a Right to Appeal.* (A) *Appealing a Conviction.* If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction. (B) *Appealing a Sentence.* After sentencing — regardless of the defendant's plea — the court must advise the defendant of any right to appeal the sentence. (C) *Appeal Costs.* The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis. (2) ***Clerk's Filing of Notice.*** If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.
(d) Judgment. **(1) In General.** A judgment of conviction must set forth the plea, the verdict or findings, the adjudication, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment must be entered accordingly. The judgment must be signed by the judge and entered by the clerk. **(2) Criminal Forfeiture.** Forfeiture procedures are governed by Rule 32.2. [3]	**(j) Judgment.** (1) ***In General.*** In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so enter judgment. The judge must sign the judgment, and the clerk must enter it. (2) ***Criminal Forfeiture.*** Forfeiture procedures are governed by Rule 32.2.

[3] The Supreme Court approved amendments in April 2000. The amendments take effect on December 1, 2000, unless Congress takes action otherwise.

(e) Plea Withdrawal. If a motion to withdraw a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit the plea to be withdrawn if the defendant shows any fair and just reason. At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255.	

COMMITTEE NOTE

The language of Rule 32 [which reflects the amendments transmitted to Congress by the Supreme Court on April 17, 2000] has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

The rule has been completely reorganized to make it easier to follow and apply. For example, the definitions in the rule have been moved to the first sections and the sequencing of the sections generally follows the procedure for presentencing and sentencing procedures.

Revised Rule 32(a) contains definitions that currently appear in Rule 32(f). One substantive change was made in Rule 32(a)(2). The Committee expanded the definition of victims of crimes of violence or sexual abuse to include victims of child pornography under 18 U.S.C. §§ 2251-2257 (child pornography and related offenses). The Committee considered those victims to be similar to victims of sexual offenses under 18 U.S.C. §§ 2241-2248, who already possess that right.

Under current Rule 32(c)(1), the court is required to "rule on any unresolved objections to the presentence report." The rule does not specify, however, whether that provision should be read literally to mean every objection that might have been made to the report or only on those objections that might in some way actually affect the sentence. The Committee believed that a broad reading of the current rule might place an unreasonable burden on the court without providing any real benefit to the sentencing process. Revised Rule 32(h)(3) narrows the requirement for court findings to those instances when the objection addresses a "controverted matter." If the objection satisfies that criterion, the court must either make a finding on the objection or decide that a finding is not required because the matter will not affect sentencing or that the matter will not be considered at all in sentencing.

Revised Rule 32(h)(4)(B) provides for the right of certain victims to address the court during sentencing. As noted, *supra*, revised Rule 32(a)(2) expands the definition of victims in Rule 32(a)(2) to include victims of crimes under 18 U.S.C. §§ 2251-57 (child pornography and related offenses). Thus, they too will now be permitted to address the court.

Rule 32(h)(4)(C) includes a change concerning who may request an in camera proceeding. Under current Rule 32(c)(4), the parties must file a joint motion for an in camera proceeding to hear the statements by defense counsel, the defendant, the attorney for the government, or any victim. Under the revised rule, any party may move that the court hear in camera any statement—by a party or a victim—made under revised Rule 32(h)(4).

Rule 32(h)(5) is a new provision that reflects *Burns v. United States*, 501 U.S. 129, 138-39 (1991). In *Burns*, the Court held that before a sentencing court could depart upward on a ground, not previously identified in the presentence report as a ground for departure, Rule 32 requires the court to give the parties reasonable notice that it is contemplating

such a ruling and to identify the specific ground for the departure. The Court also indicated that because the procedural entitlements in Rule 32 apply equally to both parties, it was equally appropriate to frame the issue as whether notice is required before the sentencing court departs either upward or downward. *Id.* at 135, n.4.

Finally, current Rule 32(e), which addresses the ability of a defendant to withdraw a guilty plea, has been moved to Rule 11(e).

REPORTER'S NOTES

In publishing the "style" changes to the Federal Rules of Criminal Procedure, the Committee decided to publish separately any rule that includes what it considered at least one major substantive change. The purpose for this separate publication is to highlight for the bench and the bar any proposed amendments that the Committee believes will result in significant changes in current practice. Rule 32 is one of those rules. In revising Rule 32, the Committee decided to also propose a substantive change that would limit the occasions that the sentencing judge would have to rule on unresolved objections to the presentence report. That version of Rule 32 is being published simultaneously in a separate pamphlet.

Rule 32.1. Revocation or Modification of Probation or Supervised Release.	Rule 32.1. Revoking or Modifying Probation or Supervised Release
(a) Revocation of Probation or Supervised Release. **(1) Preliminary Hearing.** Whenever a person is held in custody on the ground that the person has violated a condition of probation or supervised release, the person shall be afforded a prompt hearing before any judge, or a United States magistrate who has been given the authority pursuant to 28 U.S.C. § 636 to conduct such hearings, in order to determine whether there is probable cause to hold the person for a revocation hearing. The person shall be given **(A)** notice of the preliminary hearing and its purpose and of the alleged violation; **(B)** an opportunity to appear at the hearing and present evidence in the person's own behalf; **(C)** upon request, the opportunity to question witnesses against the person unless, for good cause, the federal magistrate decides that justice does not require the appearance of the witness; and **(D)** notice of the person's right to be represented by counsel. The proceedings shall be recorded stenographically or by an electronic recording device. If probable cause is found to exist, the person shall be held for a revocation hearing. The person may be released pursuant to Rule 46(c) pending the revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.	**(a) Initial Appearance.** (1) ***In Custody.*** A person held in custody for a violation of probation or supervised release must be taken without unnecessary delay before a magistrate judge. (A) If the defendant is held in custody in the district where an alleged violation occurred, the initial appearance must be in that district. (B) If the defendant is held in custody in a district other than where an alleged violation occurred, the initial appearance must be in that district, or in an adjacent district if the appearance can occur more promptly there. (2) ***Upon a Summons.*** When a person appears in response to a summons for a violation of probation or supervised release, a magistrate judge must proceed under this rule. (3) ***Advice.*** The judge must inform the person of the following: (A) the alleged violation of probation or supervised release; (B) the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; (C) the person's right, if held in custody, to a preliminary hearing under Rule 32.1(b)(1); and (D) the person's right not to make a statement concerning any alleged violation, and that any statement made may be used against the person.

	(4) ***Appearance in the District With Jurisdiction.*** If the person is arrested or appears in the district that has jurisdiction to conduct a revocation hearing — either originally or by transfer of jurisdiction — the court must proceed under Rule 32.1(b)–(e).
	(5) ***Appearance in a District Lacking Jurisdiction.*** If the person is arrested or appears in a district that does not have jurisdiction to conduct a revocation hearing, the magistrate judge must: (A) if the alleged violation occurred in the district of arrest, conduct a preliminary hearing under Rule 32.1(b) and either: (i) transfer the person to the district that has jurisdiction, if the judge finds probable cause to believe that a violation occurred; or (ii) dismiss the proceedings and so notify the court that has jurisdiction, if the judge finds no probable cause to believe that a violation occurred; or (B) if the alleged violation did not occur in the district of arrest, transfer the person to the district that has jurisdiction if: (i) the government produces certified copies of the judgment, warrant, and warrant application; and (ii) the judge finds that the person is the same person named in the warrant.
	(6) ***Release or Detention.*** The magistrate judge may release or detain the person under 18 U.S.C. § 3143(a) pending further proceedings. The burden of establishing that the person will not flee or pose a danger to any other person or to the community rests with the person.

	(b) Revocation. **(1)** ***Preliminary Hearing.*** (A) *In General.* If a person is in custody for violating a condition of probation or supervised release, a magistrate judge must conduct a prompt hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.
	(B) *Requirements.* The hearing must be recorded by a court reporter or by a suitable recording device. The judge must give the person: (i) notice of the hearing and its purpose, the alleged violation of probation or supervised release, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; (ii) an opportunity to appear at the hearing and present evidence; and (iii) upon request, an opportunity to question an adverse witness, unless the judge determines that the interest of justice does not require the witness to appear.
	(C) *Referral.* If the judge finds probable cause, the judge must conduct a revocation hearing. If the judge does not find probable cause, the judge must dismiss the proceeding.

(2) **Revocation Hearing.** The revocation hearing, unless waived by the person, shall be held within a reasonable time in the district of jurisdiction. The person shall be given: **(A)** written notice of the alleged violation; **(B)** disclosure of the evidence against the person; **(C)** an opportunity to appear and to present evidence in the person's own behalf; **(D)** the opportunity to question adverse witnesses; and **(E)** notice of the person's right to be represented by counsel.	(2) ***Revocation Hearing.*** Unless waived by the person, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction. The person is entitled to: (A) written notice of the alleged violation; (B) disclosure of the evidence against the person; (C) an opportunity to appear, present evidence, and question adverse witnesses unless the court determines that the interest of justice does not require the witness to appear; and (D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel.
(b) Modification of Probation or Supervised Release. A hearing and assistance of counsel are required before the terms or conditions of probation or supervised release can be modified, unless the relief to be granted to the person on probation or supervised release upon the person's request or on the court's own motion is favorable to the person, and the attorney for the government, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation or supervised release is not favorable to the person for the purposes of this rule.	(c) **Modification.** (1) ***In General.*** Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to an attorney. (2) ***Exceptions.*** A hearing is not required if: (A) the person waives the hearing; or (B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and (C) the attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.
	(d) **Disposition of the Case.** The court's disposition of the case is governed by 18 U.S.C. § 3563 and § 3565 (probation) and § 3583 (supervised release).

(c) Production of Statements. **(1) In General.** Rule 26.2(a)-(d) and (f) applies at any hearing under this rule. **(2) Sanctions for Failure to Produce Statement.** If a party elects not to comply with an order under Rule 26.2(a) to deliver a statement to the moving party, the court may not consider the testimony of a witness whose statement is withheld.	**(e) Producing Statements.** Rule 26.2(a)–(d) and (f) applies at a hearing under this rule. If a party does not comply with a Rule 26.2(a) order to produce a witness's statement, the court cannot consider that witness's testimony.

COMMITTEE NOTE

The language of Rule 32.1 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

Rule 32.1 has been completely revised and expanded. The Committee believed that it was important to spell out more completely in this rule the various procedural steps that must be met when dealing with a revocation or modification of probation or supervised release. To that end, some language formerly located in Rule 40 has been moved to revised Rule 32.1. Throughout the rule, the terms "magistrate judge," and "court" (*see* revised Rule 1(b)(Definitions) are used to reflect that in revocation cases, initial proceedings in both felony and misdemeanor cases will normally be conducted before a magistrate judge, although a district judge may also conduct them. But the revocation decision must be made by a district judge if the offense of conviction was a felony. *See* 18 U.S.C. § 3401(i) (recognizing that district judge may designate a magistrate judge to conduct hearing and submit proposed findings of fact and recommendations).

Revised Rule 32.1(a)(1)-(4) is new material. Presently, there is no provision in the rules for conducting initial appearances for defendants charged with violating probation or supervised release—although some districts apply such procedures. Although the rule labels these proceedings as initial appearances, the Committee believed that it was best to separate those proceedings from Rule 5 proceedings, because the procedures differ for persons who are charged with violating conditions of probation or supervised release. The Committee has added a requirement in Rule 32.1(a)(3)(D) that the person be apprised of the right to remain silent concerning the alleged violation of the terms of probation or supervised release. Although a question may arise as to whether the person has any residual privilege not to present incriminating information regarding the offense that originally led to the conviction and terms of probation or supervised release, the person should have a privilege with regard to the alleged violation leading to the Rule 32.1 proceedings.

Revised Rule 32.1(a)(5) is derived from current Rule 40(d).

Revised Rule 32.1(a)(6), which is derived from current Rule 32.1(a)(1)(D), provides that the defendant bears the burden of showing that he or she will not flee or pose a danger pending a hearing on the revocation of probation or supervised release. The Committee believes that the new language is not a substantive change because it makes no change in practice.

Rule 32.1(b)(1)(B)(iii) and Rule 32.1(b)(2)(C) address the ability of a releasee to question adverse witnesses at the preliminary and revocation hearings. Those provisions recognize that the court should apply a balancing test at the

hearing itself when considering the releasee's asserted right to cross-examine adverse witnesses. The court is to balance the person's interest in the constitutionally guaranteed right to confrontation against the government's good cause for denying it. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 489 (1972); *United States v. Comito*, 177 F.3d 1166 (9th Cir. 1999); *United States v. Walker*, 117 F.3d 417 (9th Cir. 1997); *United States v. Zentgraf*, 20 F.3d 906 (8th Cir. 1994).

Rule 32.1(c)(2)(A) permits the person to waive a hearing to modify the conditions of probation or supervised release. Although that language is new to the rule, the Committee believes that it reflects current practice.

The remainder of revised Rule 32.1 is derived from the current Rule 32.1.

Rule 32.2. Criminal Forfeiture	Rule 32.2. Criminal Forfeiture
(a) Notice to the Defendant. A court shall not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.	**(a) Notice to the Defendant.** A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.
(b) Entry of Preliminary Order of Forfeiture; Post Verdict Hearing. (1) As soon as practicable after entering a guilty verdict or accepting a plea of guilty or *nolo contendere* on any count in an indictment or information with regard to which criminal forfeiture is sought, the court shall determine what property is subject to forfeiture under the applicable statute. If forfeiture of specific property is sought, the court shall determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment against the defendant, the court shall determine the amount of money that the defendant will be ordered to pay. The court's determination may be based on evidence already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt. (2) If the court finds that property is subject to forfeiture, it shall promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. Determining whether a third party has such an interest shall be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).	**(b) Entering Preliminary Order of Forfeiture; Post-Verdict Hearing.** (1) ***In General.*** As soon as practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any count in an indictment or information with regard to which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If forfeiture of specific property is sought, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment against the defendant, the court must determine the amount of money that the defendant will be ordered to pay. The court's determination may be based on evidence already in the record, including any written plea agreement or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.

(3) The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. At sentencing—or at any time before sentencing if the defendant consents—the order of forfeiture becomes final as to the defendant and shall be made a part of the sentence and included in the judgment. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.	(2) ***Preliminary Order.*** If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment or directing the forfeiture of specific property without regard to any third party's interest in all or part of it. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).
	(3) ***Seizing Property.*** The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. At sentencing — or at any time before sentencing if the defendant consents — the order of forfeiture becomes final as to the defendant and must be made a part of the sentence and included in the judgment. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.
(4) Upon a party's request in a case in which a jury returns a verdict of guilty, the jury shall determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.	(4) ***Jury Determination.*** Upon a party's request in a case in which a jury returns a verdict of guilty, the jury must determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

(c) **Ancillary Proceeding; Final Order of Forfeiture.** (1) If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court shall conduct an ancillary proceeding but no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment. (A) In the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true. (B) After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.	(c) **Ancillary Proceeding; Final Order of Forfeiture.** (1) ***In General.*** If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding but no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment. (A) In the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true. (B) After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

(2) When the ancillary proceeding ends, the court shall enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights. If no third party files a timely claim, the preliminary order becomes the final order of forfeiture, if the court finds that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. The defendant may not object to the entry of the final order of forfeiture on the ground that the property belongs, in whole or in part, to a codefendant or third party, nor may a third party object to the final order on the ground that the third party had an interest in the property. (3) If multiple third-party petitions are filed in the same case, an order dismissing or granting one petition is not appealable until rulings are made on all petitions, unless the court determines that there is no just reason for delay. (4) An ancillary proceeding is not part of sentencing.	(2) ***Entering a Final Order.*** When the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights. If no third party files a timely petition, the preliminary order becomes the final order of forfeiture, if the court finds that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. The defendant may not object to the entry of the final order of forfeiture on the ground that the property belongs, in whole or in part, to a codefendant or third party, nor may a third party object to the final order on the ground that the third party had an interest in the property. (3) ***Multiple Petitions.*** If multiple third-party petitions are filed in the same case, an order dismissing or granting one petition is not appealable until rulings are made on all petitions, unless the court determines that there is no just reason for delay. (4) ***Ancillary Proceeding.*** An ancillary proceeding is not part of sentencing.
(d) **Stay Pending Appeal.** If a defendant appeals from a conviction or order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but shall not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents in writing or on the record.	(d) **Stay Pending Appeal.** If a defendant appeals from a conviction or order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but must not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents in writing or on the record.

(e) Subsequently Located Property; Substitute Property. (1) On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that: (A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or (B) is substitute property that qualifies for forfeiture under an applicable statute.	**(e) Subsequently Located Property; Substitute Property.** **(1)** ***In General.*** On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that: (A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or (B) is substitute property that qualifies for forfeiture under an applicable statute.
(2) If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court shall: (A) enter an order forfeiting that property, or amend an existing preliminary or final order to include it; and (B) if a third party files a petition claiming an interest in the property, conduct an ancillary proceeding under Rule 32.2(c). (3) There is no right to trial by jury under Rule 32.2(e).	**(2)** ***Procedure.*** If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court must: (A) enter an order forfeiting that property, or amend an existing preliminary or final order to include it; and (B) if a third party files a petition claiming an interest in the property, conduct an ancillary proceeding under Rule 32.2(c). **(3)** ***Jury Trial Limited.*** There is no right to trial by jury under Rule 32.2(e).

COMMITTEE NOTE

The language of Rule 32.2 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 33. New Trial	Rule 33. New Trial
On a defendant's motion, the court may grant a new trial to that defendant if the interests of justice so require. If trial was by the court without a jury, the court may— on defendant's motion for new trial— vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on newly discovered evidence may be made only within three years after the verdict or finding of guilty. But if an appeal is pending, the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds may be made only within 7 days after the verdict or finding of guilty or within such further time as the court may fix during the 7-day period.	**(a) Defendant's Motion.** Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment. **(b) Time to File.** (1) ***Newly Discovered Evidence.*** A defendant must file a motion for a new trial grounded on newly discovered evidence within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case. (2) ***Other Grounds.*** A defendant must file a motion for a new trial grounded on any reason other than newly discovered evidence within 7 days after the verdict or finding of guilty, or within such further time the court sets during the 7-day period.

COMMITTEE NOTE

The language of Rule 33 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 34. Arrest of Judgment	Rule 34. Arresting Judgment
The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or *nolo contendere,* or within such further time as the court may fix during the 7-day period.	**(a) In General.** Upon the defendant's motion or on its own, the court must arrest judgment if: **(1)** the indictment or information does not charge an offense; or **(2)** the court did not have jurisdiction of the charged offense. **(b) Time to File.** The defendant must move to set aside a verdict or finding of guilty within 7 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may set during the 7-day period.

COMMITTEE NOTE

The language of Rule 34 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 35. Correction or Reduction of Sentence	Rule 35. Correcting or Reducing a Sentence
(a) Correction of Sentence on Remand. The court shall correct a sentence that is determined on appeal under 18 U.S.C. 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable, upon remand of the case to the court– (1) for imposition of a sentence in accord with the findings of the court of appeals; or (2) for further sentencing proceedings if, after such proceedings, the court determines that the original sentence was incorrect.	(a) **Correcting Clear Error.** Within 7 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) Reduction of Sentence for Substantial Assistance. If the Government so moves within one year after the sentence is imposed, the court may reduce a sentence to reflect a defendant's subsequent, substantial assistance in investigating or prosecuting another person in accordance with the guidelines and policy statements issued by the Sentencing Commission under 28 U.S.C. § 994. The court may consider a government motion to reduce a sentence made one year or more after the sentence is imposed if the defendant's substantial assistance involves information or evidence not known by the defendant until one year or more after sentence is imposed. In evaluating whether substantial assistance has been rendered, the court may consider the defendant's pre-sentence assistance. In applying this subdivision, the court may reduce the sentence to a level below that established by statute as a minimum sentence.	**(b) Reducing a Sentence for Substantial Assistance.** (1) ***In General.*** Upon the government's motion made within one year after sentencing, the court may reduce a sentence if: (A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and (B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements. (2) ***Later Motion.*** The court may consider a government motion to reduce a sentence made more than one year after sentencing if the defendant's substantial assistance involved: (A) information not known to the defendant until more than one year after sentencing; or (B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing. (3) ***Evaluating Substantial Assistance.*** In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance. (4) ***Below Statutory Minimum.*** When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.
(c) Correction of Sentence by Sentencing Court. The court, acting within 7 days after the imposition of sentence, may correct a sentence that was imposed as the result of arithmetical, technical, or other clear error.	

COMMITTEE NOTE

The language of Rule 35 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

The Committee deleted current Rule 35(a) (Correction on Remand). That rule, which currently addresses the issue of the district court's actions following a remand on the issue of sentencing, was added by Congress in 1984. P.L. No. 98-473. The rule cross-references 18 U.S.C. § 3742, also enacted in 1984, which provides detailed guidance on the various options available to the appellate courts in addressing sentencing errors. In reviewing both provisions, the Committee concluded that Rule 35(a) was no longer needed. First, the statute clearly covers the subject matter, and second, it is not necessary to address an issue that would be very clear to a district court following a decision by a court of appeals.

Former Rule 35(c), which addressed the authority of the court to correct certain errors in the sentence, is now located in Rule 35(a).

REPORTER'S NOTES

In publishing the "style" changes to the Federal Rules of Criminal Procedure, the Committee decided to publish separately any rule that includes what it considered at least one major substantive change. The purpose for this separate publication is to highlight for the bench and the bar any proposed amendments that the Committee believes will result in significant changes in current practice. Rule 35 is one of those rules. Another version of Rule 35, which includes a substantive change, is being published simultaneously in a separate pamphlet. That version includes an amendment that would authorize a court to hear a motion to reduce a sentence, more than one year after sentence was imposed, when the defendant's substantial assistance involved information known to the defendant within one year after sentencing, but no motion was filed because the significance or usefulness of the information was not apparent until after the one-year period had elapsed.

Rule 36. Clerical Mistakes.	Rule 36. Clerical Error
Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.	After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

COMMITTEE NOTE

The language of Rule 36 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

VIII. APPEAL	
Rule 37. Taking Appeal. [Abrogated 1968.]	**Rule 37. [Reserved]**

Rule 38. Stay of Execution	**Rule 38. Staying a Sentence or a Disability**
(a) Stay of Execution. A sentence of death shall be stayed if an appeal is taken from the conviction or sentence.	**(a) Death Sentence.** The court must stay a death sentence if the defendant appeals the conviction or sentence.
(b) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken from the conviction or sentence and the defendant is released pending disposition of appeal pursuant to Rule 9(b) of the Federal Rules of Appellate Procedure. If not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where an appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of an appeal to the court of appeals.	**(b) Imprisonment.** **(1)** ***Stay Granted.*** If the defendant is released pending appeal, the court must stay a sentence of imprisonment. **(2)** ***Stay Denied.*** If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal.
(c) Fine. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the court of appeals upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating such defendant's assets.	**(c) Fine.** If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered proper and may require the defendant to: **(1)** deposit all or part of the fine and costs into the district court's registry pending appeal; **(2)** post a bond to pay the fine and costs; or **(3)** submit to an examination concerning the defendant's assets and, if appropriate, order the defendant to refrain from dissipating assets.
(d) Probation. A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay.	**(d) Probation.** If the defendant appeals, the court may stay a sentence of probation. The court must set the terms of any stay.

(e) Notice to Victims and Restitution. [4] A sanction imposed as part of the sentence pursuant to 18 U.S.C. 3555 or 3556 may, if an appeal of the conviction or sentence is taken, be stayed by the district court or by the court of appeals upon such terms as the court finds appropriate. The court may issue such orders as may be reasonably necessary to ensure compliance with the sanction upon disposition of the appeal, including the entering of a restraining order or an injunction or requiring a deposit in whole or in part of the monetary amount involved into the registry of the district court or execution of a performance bond.	**(e) Restitution and Notice to Victims.** (1) ***In General.*** If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay — on any terms considered appropriate — any sentence providing for notice under 18 U.S.C. § 3555 or restitution under 18 U.S.C. § 3556. (2) ***Ensuring Compliance.*** The court may issue any order reasonably necessary to ensure compliance with a notice or restitution order after disposition of an appeal, including: (A) a restraining order; (B) an injunction; (C) an order requiring the defendant to deposit all or part of any monetary restitution into the district court's registry; or (D) an order requiring the defendant to post a bond.
(f) Disabilities. A civil or employment disability arising under a Federal statute by reason of the defendant's conviction or sentence may, if an appeal is taken, be stayed by the district court or by the court of appeals upon such terms as the court finds appropriate. The court may enter a restraining order or an injunction, or take any other action that may be reasonably necessary to protect the interest represented by the disability pending disposition of the appeal.	**(f) Forfeiture.** A stay of a forfeiture order is governed by Rule 32.2(d). **(g) Disability.** If the defendant's conviction or sentence creates a civil or employment disability under federal law, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay the disability pending appeal on any terms considered appropriate. The court may issue any order reasonably necessary to protect the interest represented by the disability pending appeal, including a restraining order or an injunction.

[4] The Supreme Court approved amendments in April 2000. The amendments take effect on December 1, 2000, unless Congress takes action otherwise.

COMMITTEE NOTE

The language of Rule 38 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The reference to Appellate Rule 9(b) is deleted. The Committee believed that the reference was unnecessary and its deletion was not intended to be substantive in nature.

Rule 39. Supervision of Appeal [Abrogated 1968]	**Rule 39. [Reserved]**

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS	TITLE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS
Rule 40. Commitment to Another District	**Rule 40. Arrest for Failing to Appear in Another District**
(a) Appearance Before Federal Magistrate Judge. If a person is arrested in a district other than that in which the offense is alleged to have been committed, that person shall be taken without unnecessary delay before the nearest available federal magistrate judge, in accordance with the provisions of Rule 5. Preliminary proceedings concerning the defendant shall be conducted in accordance with Rules 5 and 5.1, except that if no preliminary examination is held because an indictment has been returned or an information filed or because the defendant elects to have the preliminary hearing conducted in the district in which the prosecution is pending, the person shall be held to answer upon a finding that such person is the person named in the indictment, information, or warrant. If held to answer, the defendant shall be held to answer in the district court in which the prosecution is pending — provided that a warrant is issued in that district if the arrest was made without a warrant — upon production of the warrant or a certified copy thereof. The warrant or certified copy may be produced by facsimile transmission.	**(a) In General.** A person arrested under a warrant issued in another district for failing to appear — as required by the terms of that person's release under 18 U.S.C. §§ 3141-3156 or by a subpoena — must be taken without unnecessary delay before a magistrate judge in the district of the arrest. **(b) Proceedings.** The judge must proceed under Rule 5(c)(2) as applicable. **(c) Release or Detention Order.** The judge may modify any previous release or detention order issued in another district, but must state in writing the reasons for doing so.
(b) Statement by Federal Magistrate Judge. In addition to the statements required by Rule 5, the federal magistrate judge shall inform the defendant of the provisions of Rule 20.	
(c) Papers. If a defendant is held or discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.	